

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
SANTINO TOMAINO,

Plaintiff,

-against-

MEMORANDUM AND ORDER  
12-CV-1954(JS)(ARL)

MICHAEL RATTINTER, Shield 5560,  
individually and as a Police  
Officer of the County of Suffolk,  
and THE COUNTY OF SUFFOLK

Defendants.

-----X  
APPEARANCES:

For Plaintiff: Santino Tomaino, Pro Se  
80 Newton Boulevard  
Lake Ronkonkoma, NY 11779

For Defendants: No appearances

SEYBERT, District Judge:

Presently pending before the Court is the pro se Complaint brought by pro se plaintiff Santino Tomaino ("Plaintiff") pursuant to 42 U.S.C. § 1983 alleging violation of Plaintiff's rights as guaranteed by the Fourth, Fifth and Fourteenth Amendments of the United States Constitution. Plaintiff's Complaint is accompanied by an application to proceed in forma pauperis. Upon review of the declaration in support of the application to proceed in forma pauperis, the Court determines that the Plaintiff's financial status qualifies him to commence this action without prepayment of the \$350.00 filing fee. See 28 U.S.C. §§ 1914(a); 1915(a)(1). Therefore, Plaintiff's request to proceed in forma pauperis is GRANTED.

Having reviewed the pro se Complaint, the undersigned

declines to conclude at this stage that the within action is frivolous or malicious within the meaning of 28 U.S.C. § 1915. While it may be that Plaintiff is unable to prevail on his claim, the Court's uncertainty does not justify dismissal at this early juncture. McEachin v. McGuinnis, 357 F.3d 197, 200 (2d Cir. 2004). Accordingly, the application to proceed in forma pauperis is GRANTED and the Court orders service of the Complaint without prepayment of the filing fee.

The Clerk of the Court is directed to forward to the United States Marshal for the Eastern District of New York copies of Plaintiff's Summons, Complaint, and this Order for service upon the Defendants without prepayment of fees. Furthermore, the Clerk is directed to mail a copy of this Order to the Plaintiff.

SO ORDERED.

/s/ JOANNA SEYBERT  
Joanna Seybert, U.S.D.J.

Dated: April 30, 2012  
Central Islip, New York